

AMENDED IN SENATE MAY 21, 2009

AMENDED IN SENATE MAY 12, 2009

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 555

Introduced by Senator Kehoe

February 27, 2009

An act to add Section 1240.055 to the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 555, as amended, Kehoe. Eminent Domain Law: conservation easement.

Existing law authorizes various agencies to acquire land for purposes related to conservation. Existing law provides for a conservation easement to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. Existing law establishes procedures for the independent appraisal review of land to be acquired for conservation and establishes a conservation easement registry. Existing law prohibits, with a specified exception, the sale of conservation lands to another owner or the transfer of possession and control of conservation lands to another agency, unless specified actions occur.

The California Constitution permits private property to be taken or damaged for public use only when just compensation is paid. The Eminent Domain Law prescribes how that constitutionally authorized power may be exercised and permits that exercise only for a public use. Existing law prohibits a public entity from commencing an eminent

domain proceeding until its governing body has adopted a resolution of necessity that meets specified requirements.

This bill would revise the Eminent Domain Law to establish requirements for acquisition of property subject to a conservation easement. The bill would require the person seeking to acquire the property to give the holder of the conservation easement a notice containing specified information and an opportunity to state any objections to the acquisition. The bill would require the holder of conservation easement to provide notice, as specified, of the proposed acquisition to a public entity that helped fund the purchase of the conservation easement or that imposed conditions on a project that were satisfied, in whole or in part, by the conservation easement. ~~The bill would provide that a holder of a conservation easement or a public entity, as described above, that fails to make written objection to the acquisition within specified time periods would waive the right to appear and be heard at the hearing prior to the adoption of a resolution of necessity.~~ The bill would require a person seeking to acquire the property subject to a conservation easement to respond to any objections in writing and provide by first-class mail the response to each easement holder or public entity that filed an objection. The bill would require the notice of the hearing on the resolution of necessity to be sent to any holder of a conservation easement or public entity ~~that submits objections, as specified, and to contain information regarding the effect of failing to file a written request to appear and be heard.~~ The bill would require that a resolution of necessity to acquire property subject to a conservation easement to refer to specific authority for the acquisition of the property. The bill would specify that the holder of a conservation easement is entitled to compensation under the Eminent Domain Law.

To the extent that this bill would impose new duties on a local governmental entity, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1240.055 is added to the Code of Civil
2 Procedure, to read:
3 1240.055. (a) As used in this section, the following terms have
4 the following meanings:
5 (1) “Conservation easement” means a conservation easement
6 as defined in Section 815.1 of the Civil Code and recorded as
7 required by Section 815.5 of the Civil Code.
8 (2) “Holder of a conservation easement” means an entity or
9 organization authorized to acquire and hold conservation easements
10 pursuant to Section 815.3 of the Civil Code.
11 (3) “Person” means any person authorized to acquire property
12 by eminent domain.
13 (4) “Property appropriated to public use,” as used in Article 6
14 (commencing with Section 1240.510) and Article 7 (commencing
15 with Section 1240.610), includes a conservation easement.
16 (b) A person authorized to acquire property for a particular use
17 by eminent domain shall exercise the power of eminent domain
18 to acquire, for public use, property that is subject to a conservation
19 easement only as provided in this section.
20 (c) Not later than 90 days prior to the hearing held pursuant to
21 Section 1245.235, the person seeking to acquire property subject
22 to a conservation easement shall give notice to the holder of a
23 conservation easement as provided in this subdivision.
24 (1) The notice required by this subdivision shall be sent by
25 first-class mail and, subject to the provisions of paragraph (2),
26 shall state all of the following:
27 (A) A general description, in text or by diagram, of the property
28 subject to a conservation easement that the person proposes to
29 acquire by eminent domain.
30 (B) A description of the public use or improvement that the
31 person is considering for the property subject to a conservation
32 easement.
33 (C) The date by which objections may be submitted pursuant
34 to paragraph (3).

(D) A description of the duty of the holder of the conservation easement, if the duty exists under paragraph (2), to provide a copy of the notice by first-class mail to each public entity that provided funds for the purchase of the easement or that imposed conditions on a project that were satisfied, in whole or in part, by the conservation easement, within 15 days of receipt of the notice from the person seeking to acquire property, and a statement that any such public entity has 30 days from the date the conservation easement holder mailed the notice to submit written objections. This description shall specifically reference paragraph (2) of subdivision (c) of Section 1240.055 of the Code of Civil Procedure.

~~(E) A statement indicating that the failure of the holder of the conservation easement to provide, in writing, its objections to the acquisition, on or before 45 days after the date the notice from the person seeking to acquire property is mailed, will result in the waiver of the right to appear and be heard at the hearing required prior to the adoption of the resolution of necessity.~~

(2) (A) If the requirements of subparagraph (B) are met, the holder of the conservation easement shall provide by first-class mail a copy of the notice described in paragraph (1) to any public entity that provided funds for the purchase of the conservation easement or that imposed conditions on a project that were satisfied, in whole or in part, by the conservation easement. The holder of the conservation easement shall provide the copy of the notice to the public entity within 15 days of receipt of the notice from the person seeking to acquire property and shall also notify the person seeking to acquire property of any public entity that is entitled to notification.

(B) Subparagraph (A) shall apply only if one of the following is true:

(i) The holder of the easement is the original grantee of the conservation easement and there is a public entity as described in subparagraph (A).

(ii) The holder of the easement has actual knowledge of a public entity as described in subparagraph (A).

(iii) Recorded documents evidence the identity of a public entity as described in subparagraph (A).

(3) The holder of the conservation easement or the public entity receiving notice, or both, may provide to the person seeking to acquire the property written objections to the acquisition, including

1 identifying any potential conflict between the public use proposed
2 for the property and the purposes and terms of the conservation
3 easement. The holder of the conservation easement shall provide
4 these objections, if any, on or before 45 days after the date the
5 person seeking to acquire property mailed the notice ~~or waive the~~
6 ~~right to appear and be heard at the hearing required prior to the~~
7 ~~adoption of the resolution of necessity.~~ A public entity as described
8 in paragraph (2) shall provide these objections, if any, on or before
9 30 days after the date a conservation easement holder mailed a
10 copy of the notice to the entity ~~or waive the right to appear and be~~
11 ~~heard at the hearing required prior to the adoption of the resolution~~
12 ~~of necessity.~~

13 (d) The person seeking to acquire the property subject to a
14 conservation easement shall, within 30 days after receipt of written
15 objections from the holder of the conservation easement or from
16 a public entity described in paragraph (2) of subdivision (c) shall
17 respond in writing to the objections. The response to the objections
18 shall be mailed by first-class mail to each easement holder or public
19 entity that filed an objection.

20 (e) The notice of the hearing on the resolution of necessity,
21 pursuant to Section 1245.235, shall be sent *by first-class mail* to
22 any holder of a conservation easement and public entity ~~that~~
23 ~~submits objections of which the person seeking to acquire the~~
24 ~~property has received notice pursuant to paragraph (2) of~~
25 ~~subdivision (c) and shall inform them that they have the right to~~
26 ~~appear and be heard on the matters referred to in Sections 1240.030,~~
27 ~~1240.510, and 1240.610. The notice shall state that, pursuant to~~
28 ~~paragraph (3) of subdivision (b) of Section 1245.235, failure to~~
29 ~~file a written request to appear and be heard within 15 days after~~
30 ~~the notice was mailed will result in a waiver of the right to appear~~
31 ~~and be heard.~~ The resolution of necessity to acquire property
32 subject to a conservation easement shall refer specifically to either
33 to Section 1240.510 or 1240.610 as authority for the acquisition
34 of the property.

35 (f) In any eminent domain proceeding to acquire property subject
36 to a conservation easement, the holder of the conservation easement
37 shall be named as a defendant, as set forth in Section 1250.220,
38 may appear in the proceedings as set forth in Section 1250.230,
39 and shall have all the same rights and obligations as any other
40 defendant in the eminent domain proceeding.

1 (g) The holder of a conservation easement is entitled to
2 compensation pursuant to subdivision (a) of Section 1260.220 and
3 Chapter 9 (commencing with Section 1263.010). Compensation
4 for the taking of the property subject to a conservation easement
5 shall be no less than the fair market value of the property if it were
6 unencumbered by that conservation easement.

7 (h) This section shall not apply if the requirements of Section
8 1348.3 of the Fish and Game Code apply.

9 SEC. 2. If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.